



EMPLOYMENT TRIBUNALS

Claimant: Mr Steve Thomas

Respondent: Sasse Facilities Management Limited

Heard at: Watford Employment Tribunal **On:** 22 January 2024

Before: Regional Employment Judge Foxwell

Appearances

For the claimant: In person

For the respondent: Mr T Brennan (consultant)

PRELIMINARY HEARING IN PUBLIC JUDGMENT

The judgment of the Tribunal is as follows:

1. The complaints of public interest disclosure (whistleblowing) dismissal and/or detriment are struck out under Employment Tribunal Rule 37(1)(d) because they have not been actively pursued and under Rule 37(1)(a) because they stand no reasonable prospect of success.
2. The claimant's claim of 'ordinary' unfair dismissal will proceed to a hearing.

REASONS

1. The claimant, Mr Steve Thomas, presented a complaint against his former employer, Sasse Facilities Management Limited, to the Tribunal on 28 January 2023, having gone through early conciliation between 3 January and 12 January 2023. The contents of his claim form are brief, for example the claimant said that he had worked for the respondent as a cleaner but did not give details of when his employment began or finished. The respondent says that his employment began in 2009 and ended in or around 1 November 2022.
2. The parties disagree about whether the claimant was dismissed or resigned, but he complains of unfair dismissal. He also ticked the box on the claim form saying

that he was claiming “other payments” but he does not set out what these are. His grounds of claim are short, saying simply:

“Unfair dismissal on harassment and talking the truth”

Finally, he claims compensation in the round sum of £10,000.

3. The claimant ticked box 10 on the claim form which asks whether a protected disclosure (“whistleblowing”) claim should be referred to a relevant regulator. The claimant provided no context for this in his claim form, however.
4. Subsequently, on 3 April 2023 the claimant emailed the Tribunal providing further particulars of his claim. He said as follows,

“I was being harassed due to whistleblowing, speaking the truth.

I was whistle blowing because she was committing theft and fraud, stealing people’s money, and also because she was breaking health and safety rules and regulations.

Due to me doing this, she was harassing me telling me constantly that I was going to lose my job and give me more work to do which was breaking health and safety rules.”

5. The respondent filed a response in May 2023 disputing that the claimant had been dismissed and denying that the claimant had made protected disclosures.
6. By a written notice dated 21 July 2023 the Tribunal listed a case management hearing on 12 September 2023. The hearing notice incorporated an order for the claimant to provide details in writing of his whistleblowing disclosures by 11 August 2023. The claimant received this notice; in fact he contacted the Tribunal to say he was unwell and unfit to attend the hearing and this led to it being postponed.
7. The claimant did not provide the further information as he had been ordered to do and on 5 September 2023 the Tribunal wrote to him ordering him to provide the information in writing by 8 September 2023. Once again, he did not do so.
8. The case management hearing which had been postponed from September 2023 was relisted on 14 November 2023 but unfortunately had to be postponed at short notice because there was no judge to hear it. The claimant did not see the notification of this postponement and he attended the Tribunal only to find that the case was not going ahead that day.
9. The case management hearing was relisted to today’s date. In the interim the respondent applied for the claim to be struck out on the basis that the claimant was not actively pursuing it and/ or that he had not complied with the Tribunal’s order for further information described above. Because of this application, the hearing was converted from a case management hearing in private to a preliminary hearing in public to determine whether the claim should be struck out.

10. Unfortunately today's hearing began late because the claimant did not arrive until about 2.45pm. He told me, and I accepted, that this was because of problems with public transport.
11. I heard submissions from Mr. Brennan on behalf of the respondent, and from the claimant in reply. I asked the claimant to clarify the disclosures he relies on for his whistleblowing claim. I have considered the claimant's case at its highest and I have borne in mind that strike out is a draconian step which should rarely be taken where the fair trial of a claim or issue is possible.
12. Mr Brennan argued that the respondent should not be expected to face a case which has not been set out clearly and that the claimant's conduct in not providing information about his disclosures despite being given two chances to do so shows that he is not actively pursuing this case.
13. The claimant accepts that he did not reply to the Tribunal's orders. His explanation is that he does not understand these matters, has no experience of them, and is not used to dealing with correspondence. He said that he hoped to get representation to help him with this claim but that he had been unsuccessful in this so far.
14. I have taken into account that the claimant worked for many years as a cleaner, so not in a job which involves the regular consideration or preparation of documents.
15. I asked the claimant to explain the disclosures he made and which form the basis of his whistleblowing complaint to understand the strength of his claims. The claimant was initially reluctant to do so because, he said, he wished to take legal advice. It did not seem to me to be just to postpone this hearing to enable him to make these further enquiries given the long delay which had occurred already. I also had regard to the fact that it is difficult for parties, claimants in particular, to find free or affordable sources of advice. I doubted that further delay would be productive and took the view that today was a good opportunity for the claimant to explain to me what his story is in terms of the disclosures that he said he made which amounted to whistleblowing.
16. After some prompting and by reference to his email of 4 April 2023, the claimant explained that his disclosures had been made to his area manager, Cheryl Jacob. His allegation of theft and fraud was made to Ms Jacob in or about November 2019 (although the claimant was unsure about the date). It concerned a disagreement with her about whether the claimant could take one week's or two consecutive weeks' paid holiday. As I understood it, the allegation of theft or fraud is that Ms Jacob was 'stealing' the claimant's annual leave.
17. The claimant said that a second whistleblowing disclosure related to health and safety regulations. He said that this was made to Ms Jacob in 2015 or 2016 and concerned a cleaning job in which he had been expected to mop what I take to be an indoor football pitch. He says that he told Ms Jacob that this was too much

for one person and that machinery was required but that she refused to allocate a second cleaner or provide a suitable machine.

18. Apart from these examples, the claimant's particulars of his disclosures were unfocused. He began to tell me about an issue that he had had with his pay slips back in 2012 but it was by no means clear what was missing or that this was a protected disclosure.
19. In my judgment, when given the opportunity to explain, the claimant did not provide a coherent factual account of the protected disclosures he had made or how they might fit into the scheme in Part IVA of the Employment Rights Act 1996. On the other hand what the claimant did describe was a deteriorating relationship with his area manager, Ms Jacob, which culminated in the ending of his employment.
20. Stepping back, I conclude that a key reason why the claimant did not respond to the tribunal's order for a written explanation of his protected disclosures is that he simply cannot identify them. This is something other than an unfamiliarity with dealing with things in writing.
21. I have decided that it would not be in accordance with the overriding objective to strike out this case in its entirety: the claimant presented a timely claim following the ending of his employment; he plainly feels aggrieved about his treatment in his employment; and I have regard to my assessment of him as a man not used to dealing with matters in writing.
22. I have power to strike out parts of a claim however and the just approach in my judgement is to strike out the complaint of public interest disclosure detriment and/ or dismissal. Frankly, the claimant was not able to articulate whistleblowing complaints, rather what he described was a history of disagreement with his area manager which might arguably amount to grounds for constructive dismissal or an actual dismissal depending on the sequence of events.
23. So I am not going to shut the claimant out of justice all together, but this claim will proceed as a complaint of unfair dismissal only and not as a complaint of whistleblowing detriment because I am satisfied that it is appropriate to strike that aspect of the complaint out firstly on the basis that it has not been actively pursued and secondly on the additional ground that the claim stands no reasonable prospect of success.

Regional Employment Judge Foxwell

23 January 2024

Sent to the parties on:

13 February 2024

For the Tribunal: